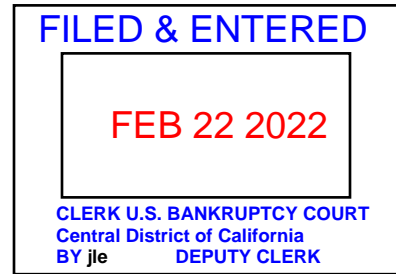


FOR PUBLICATION



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re: Dennis Edward Lake <div style="text-align: right;">Debtor(s).</div>	CHAPTER 7 Case No.: 8:17-bk-14478-MW Adv No: 8:18-ap-01035-MW
Federal Trade Commission <div style="text-align: right;">Plaintiff(s),</div> v. Dennis Edward Lake <div style="text-align: right;">Defendant(s).</div>	MEMORANDUM DECISION AND ORDER Date: February 9, 2022 Time: 9:00 a.m. Courtroom: 6C

Michael P. Mora and Stacy R. Procter, for the Federal Trade Commission, Plaintiff
Dennis Edward Lake, self-represented, Defendant

This matter comes before the Court on the motion (the "Motion") of debtor-defendant Dennis Edward Lake ("Mr. Lake") to dismiss the Amended Complaint for Dischargeability of Debt, Docket No. 9, filed March 30, 2018 (the "Amended Complaint")

1 by plaintiff Federal Trade Commission (the “FTC”). Mr. Lake, who is self-represented in
2 this matter, does not specifically cite or refer to Federal Rule of Bankruptcy Procedure
3 7012(b), but his Motion is essentially based upon the argument that the FTC has failed to
4 state a claim upon which relief can be granted. The FTC opposes the Motion and has
5 filed its own cross-motion for partial summary judgment.

6 **FACTUAL BACKGROUND**

7 A detailed discussion of this adversary proceeding’s factual background can be
8 found in this Court’s decision in *Federal Trade Commission v. Lake (In re Lake)*, 628 B.R.
9 664 (Bankr. C.D. Cal. 2021) (“FTC v. Lake I”). The Court briefly summarizes the facts
10 below.

11 Mr. Lake obtained clients by contracting with other businesses whose customers
12 were distressed homeowners and who referred those homeowners to Mr. Lake for
13 advocacy services. Mr. Lake’s role and task was to work with banks on the so-called
14 “back end” to help homeowners obtain loan modifications. The FTC, believing that Mr.
15 Lake and the businesses with whom he was working were violating FTC regulations,
16 brought suit against Mr. Lake (the “District Court Action”) in the United States District
17 Court for the Central District of California (the “District Court”). The FTC alleged in the
18 District Court Action that Mr. Lake had violated the MARS Substantial Assistance Rule
19 and the TSR Substantial Assistance Rule. The District Court agreed with the FTC and
20 granted judgment in favor of the FTC and against Mr. Lake in the amount of
21 \$2,349,885.00 (after amendment) (the “FTC Judgment”). *Federal Trade Commission v.*
22 *Lake*, 181 F. Supp. 3d 692 (C.D. Cal. 2016).

23 Mr. Lake filed a voluntary chapter 7 petition on November 13, 2017, seeking,
24 among other things, a discharge of the FTC Judgment. The FTC commenced this
25 adversary proceeding by filing a complaint against Mr. Lake on February 9, 2018, and
26 then filing the Amended Complaint about seven weeks later. The gravamen of the
27 Amended Complaint is to be found in numbered paragraphs 67 and 83 thereof, wherein
28 the FTC alleges that the FTC Judgment “is a debt for money, property, or services

1 obtained by false pretenses, false representations or actual fraud, and is excepted from
2 discharge pursuant to 11 U.S.C. § 523(a)(2)(A).” Count One (culminating in paragraph
3 67) alleges that the FTC Judgment is based upon violations of MARS Assistance Rule
4 and Count Two (culminating in paragraph 83) alleges that the FTC Judgment is based
5 upon the TSR Substantial Assistance Rule.

6 ANALYSIS

7 11 U.S.C. § 523(a)(2)(A) provides in relevant part that “[a] discharge under section
8 727 . . . of this title does not discharge an individual from any debt . . . for money,
9 property, services . . . to the extent obtained by . . . false pretenses, a false
10 representation, or actual fraud . . .”

11 11 U.S.C. § 101(12) defines the term “debt” as “liability on a claim.” 11 U.S.C. §
12 101(5)(A) defines the term “claim” in relevant part as “[a] right to payment, whether or not
13 such right is reduced to judgment . . .”

14 Here, there can be no doubt that the FTC has a “right to payment” in respect of the
15 FTC Judgment and that Mr. Lake’s obligation to pay the FTC Judgment is a “liability on a
16 claim” and therefore a “debt” as defined in 11 U.S.C. §101(12) and § 523(a)(2)(A). Is it
17 the case, however, that the FTC Judgment is a debt “for” money, property, services . . . to
18 the extent obtained by false pretenses, a false representation, or actual fraud?

19 The Amended Complaint does not allege that Mr. Lake obtained money from the
20 FTC by false pretenses, a false representation or actual fraud. Instead, the FTC alleges
21 that Mr. Lake obtained money from other people by false pretenses, a false
22 representation or actual fraud. However, it is not these other people (whom Mr. Lake is
23 alleged to have defrauded) who hold the FTC Judgment, it is the FTC itself who holds the
24 FTC Judgment.

25 Under these circumstances, proper analysis of section 523(a)(2)(A) requires the
26 Court to determine whether the FTC Judgment is a debt for money, property or services
27 obtained by false pretenses, a false representation or actual fraud.

28 Probably the best interpretation of the meaning of the word “for” as it is used in

1 section 523(a)(2)(A) is “because of” or “on account of.” *Sherman v. Securities Exchange*
2 *Commission (In re Sherman)*, 658 F.3d 1009, 1012-13 (9th Cir. 2011) (“for” in this context
3 may mean “penalty on account of,” “the consequence of,” “by reason of,” or “the effect
4 of”); *Richardson v. Hidy Honda, Inc. (In re Richardson)*, 221 B.R. 956, 960 (D. Wy. 1998)
5 (“Debt for” means “debt as a result of” or “debt by reason of”). Each of these
6 interpretations brings into play the concept of causality. In other words, did activities by
7 Mr. Lake allegedly in the nature of false pretenses, a false representation or actual fraud
8 cause the FTC Judgment?

9 The following hypothetical is of some aid and assistance in analyzing this issue.
10 Assume that A files a complaint against B in state court, alleging breach of contract and
11 actual fraud. The parties agree to a settlement in which B denies any liability for either
12 breach of contract or fraud, but agrees to pay A \$50,000. One year later, B files a
13 voluntary chapter 7 petition and seeks a discharge of his debt to A. A files an adversary
14 complaint, alleging that B’s debt is excepted from discharge because B obtained money
15 from A through false pretenses, a false representation and actual fraud.

16 In this situation, there was no judicial determination – or any other kind of
17 determination – as to the cause of B’s liability to A. Therefore, it would be proper to
18 permit A to litigate the issue of “what caused the debt to arise?” in bankruptcy court and
19 to attempt to prove that B’s debt to A arose because B obtained money from A through
20 false pretenses, a false representation or actual fraud. *Cf. Archer v. Warner*, 538 U.S.
21 314, 317 (2003) (“the settlement agreement does not resolve the issue of fraud”).

22 The FTC’s position in this adversary proceeding is utterly unlike that of A in the
23 preceding hypothetical. Here, there is a judicial determination of the cause of Mr. Lake’s
24 debt to the FTC: the FTC has a right to payment from Mr. Lake because the District
25 Court determined in the District Court Action that Mr. Lake violated the FTC’s MARS
26 Substantial Assistance Rule and the TSR Substantial Assistance Rule. The FTC has
27 endeavored in this adversary proceeding to use issue preclusion to show that Mr. Lake’s
28 activities as found by the District Court in the District Court Action prove up a case that

1 Mr. Lake obtained money by false pretenses, a false representation or actual fraud within
2 the meaning of 11 U.S.C. § 523(a)(2)(A). But even if the FTC is able to do this, it would
3 not change the fact that the FTC Judgment is a debt “for” violating FTC regulations, not a
4 debt “for” obtaining money by false pretenses, a false representation or actual fraud. The
5 FTC Judgment could be shown to be a debt “for” false pretenses, a false representation
6 or actual fraud only through a kind of false historical revisionism in which the District
7 Court is assumed to have decided something (that Mr. Lake obtained money by
8 committing actual fraud, for example) that the District Court never in fact decided.

9 It is certainly not the case that the elements required to be proven up to show a
10 violation of the FTC regulations here at issue (i.e., the MARS Substantial Assistance Rule
11 and the TSR Substantial Assistance Rule) are the same elements required to be proven
12 up to show that Mr. Lake obtained money by false pretenses, a false representation or
13 actual fraud. A person can violate the FTC regulations at issue here without obtaining
14 money by false pretenses, a false representation or actual fraud. It is equally true that a
15 person can obtain money by false pretenses, a false representation or actual fraud
16 without violating the FTC’s regulations.

17 To prove up a violation of the MARS Substantial Assistance Rule, the FTC must
18 show (1) an underlying violation of the MARS Rule by a MARS provider; (2) substantial
19 assistance or support by a person to that provider; and (3) knowledge or conscious
20 avoidance, on the part of the person, of the underlying violation. Proof of the first
21 element, in turn, requires proof that (a) a service provider received an advance fee, (b)
22 such person made material misrepresentations to their clients in violation of 12 C.F.R. §
23 1015.3, and (c) such person failed to make mandatory disclosures under 12 C.F. R. §
24 1015.4. *Federal Trade Commission v. Lake*, 181 F. Supp. 3d 692, 698-700 (C.D. Cal.
25 2016).

26 As this Court pointed out in *FTC v. Lake I*, “[w]hat is glaringly absent here . . . is
27 any requirement in the MARS Rule of a showing that the consumers to whom
28 representations were made justifiably relied upon such representations.” *Federal Trade*

1 *Commission v. Lake (In re Lake)*, 628 B.R. 664, 670 (Bankr. C.D. Cal. 2021)
2 (underscoring in the original). The Supreme Court of the United States has held that
3 justifiable reliance must be proven up to prove that debt is excepted from discharge
4 under 11 U.S.C. § 523(a)(2)(A). *Field v. Mans*, 516 U.S. 59 (1995). Because justifiable
5 reliance need not be shown to prove up a violation of the MARS Substantial Assistance
6 Rule, it follows that not each and every violation of the MARS Assistance Rule constitutes
7 an instance where money, property or services were obtained by false pretenses, a false
8 representation or actual fraud.

9 The same analysis holds true with respect to the TSR Substantial Assistance
10 Rule. The TSR Substantial Assistance Rule prohibits a person from providing substantial
11 assistance or support to any seller or telemarketer when that person knows or
12 consciously avoids knowing that the seller or telemarketer is engaged in any act or
13 practice that violates (a), (c) or (d) of 16 C.F.R. § 310.3. 16 C.F.R. 310.3(b). The
14 substantial assistance provision has three elements: (1) there must be an underlying
15 violation of the TSR; (2) the person must provide substantial assistance or support to the
16 seller or telemarketer violating the TSR; and (3) the person must know or consciously
17 avoid knowing that the seller or telemarketer is violating the TSR. *Federal Trade*
18 *Commission v. Lake*, 181 F. Supp. 3d 692, 700-01 (C.D. Cal. 2016). Justifiable reliance
19 by consumers on false representations made by a seller or telemarketer need not be
20 proven to show a violation of the TSR Substantial Assistance Rule. Thus, it follows that
21 not each and every violation of the TSR Substantial Assistance Rule constitutes an
22 instance where money, property or services were obtained by false pretenses, a false
23 representation or actual fraud.

24 As stated earlier, “debt for” means debt caused by. A cause is traditionally thought
25 of as that which produces something – an effect. In many, perhaps even most,
26 instances, an effect is produced by a plethora of partial causes that may be termed
27 “causal conditions.” These causal conditions fall into the category of *sine qua non*--
28 “without which, not.” For example, for a person who traveled to the World Trade Center

1 on September 11, 2001 and died in the attack, his or her travel that day was a causal
2 condition and a *sine qua non*. If he or she have not gone to the World Trade Center on
3 that day and had remained home, he or she would not have died in the attack.

4 A cause that produces an effect may be defined as a set of causal conditions each
5 of which is necessary (a *sine qua non*, in other words) and which collectively or jointly are
6 sufficient to produce the effect. 1-2 *Encyclopedia of Philosophy*, "Causation", page 63.

7 Here, the effect is the FTC Judgment. If one of the necessary causal conditions
8 for producing the FTC Judgment was a judicial determination by the District Court that
9 Mr. Lake obtained \$2,349,885.00 through false pretenses, a false representation or
10 actual fraud, the FTC Judgment can properly be said to be a debt "for" money obtained
11 by false pretenses, a false representation or actual fraud because it would be a "cause"
12 of the FTC Judgment. However, as shown above, the District Court did not have to make
13 that finding to be able to render the FTC Judgment and, in point of fact, did not make it.

14 The lack of correspondence between the requirements for proving up a violation of
15 the MARS Substantial Assistance Rule and/or the TSR Substantial Assistance Rule on
16 one hand and an exception to discharge for a debt described in 11 U.S.C. § 523(a)(2)(A)
17 on the other hand means that the FTC cannot validly contend that the FTC Judgment is a
18 debt "for" money obtained by false pretenses, a false representation or actual fraud.

19 As the United States Court of Appeals for the Ninth Circuit pointed out in *Sherman*,
20 *supra*, the definition of the word "for" is capacious, and "for" can mean many things. If the
21 FTC were able to prove up each and every element of false pretenses, false
22 representation or actual fraud on Mr. Lake's part, would that be enough to make the FTC
23 Judgment nondischargeable even though proof of those things was neither necessary
24 nor sufficient in terms of obtaining the FTC Judgment against Mr. Lake? This question is
25 best answered by reference to black-letter, hornbook law in connection with exceptions to
26 discharge under section 523(a): exceptions to discharge under section 523 are to be
27 strictly construed in favor of the debtor. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998);
28 *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1104 (9th Cir. 2005); *Sachan v. Huh (In re*

1 *Huh*), 506 B.R. 257 (B.A.P. 9th Cir. 2014). A broad interpretation of the word “for” would
2 run afoul this most basic rule of section 523 jurisprudence. The rule dictates that “for”
3 should be interpreted narrowly in terms of its meaning. A narrow interpretation in
4 accordance with the rule would entail that courts would focus on causation. In this
5 context, the word “for” should not be broadly interpreted to sweep in instances where the
6 debt at issue has been proven up based upon the presence of elements other than those
7 described in section 523(a) but where activities or events described in section 523(a)
8 might be lurking in the background.

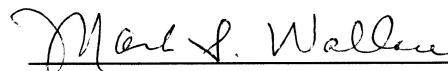
9 Strictly construing the meaning of the word “for” in Mr. Lake’s favor, as this Court
10 is required to do by *Kawaauhau* and *Jett*, the Court determines that Mr. Lake’s debt to
11 the FTC arising from the FTC Judgment is a debt “for” violating the MARS Substantial
12 Assistance Rule and the TSR Substantial Assistance Rule and not a debt “for” “money,
13 property or services . . . obtained by . . . false pretenses, a false representation or actual
14 fraud” within the meaning of 11 U.S.C. § 523(a)(2)(A). Therefore, the FTC Judgment is
15 not excepted from discharge.

16 The Amended Complaint fails to state a claim upon which relief can be granted for
17 the reasons described above. The Motion is granted, and the Amended Complaint
18 hereby is dismissed without leave to amend.

19 IT IS SO ORDERED.

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25 Date: February 22, 2022


Mark S. Wallace
United States Bankruptcy Judge